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6 KERNAN CONSTRUCTION CO.,  
7 BEDROCK INVESTMENTS LLC,  
8 SCOTT FARLEY and KURT KERNEN

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIANS FOR ALTERNATIVES TO  
TOXICS,

Case No. 4:24-cv-04067-YGR

12 Plaintiff,  
13 v.  
14 KERNEN CONSTRCUTION CO.;  
15 BEDROCK INVESTMENTS LLC; SCOTT  
16 FARLEY; and KURT KERNEN,  
17 Defendants.

18 /

DECLARATION OF ALLISON G.  
JACKSON IN SUPPORT OF MOTION TO  
DISMISS

Date: November 12, 2024  
Time: 2:00 p.m.  
Courtroom: 1, 4th Floor  
Oakland Courthouse  
1301 Clay Street  
Oakland, CA 94612  
Judge: Honorable Yvonne Gonzalez Rogers  
Trial Date: TBD  
Action Filed: July 5, 2024

I, ALLISON G. JACKSON, declare as follows:

1. I am the attorney of record for Defendants in the above-entitled action. I was also  
the attorney of record for Defendants in Case No. 4:16-CV-04007-YGR and 4:20-cv-01348-  
YGR.

2. The State of California Water Resources Control Board keeps their official  
records of stormwater compliance online in a system called SMARTS. This is accessible to the  
general public, but it requires the user log in. Due to this log in requirement, a simple link cannot  
be provided.

3. Attached to Defendants' Request for Judicial Notice as Exhibit A is a true and  
correct copy of the online 2022 SWPPP filed with the water board by Defendants. This is the

1 2022 SWPPP referred to in the Complaint.

2 4. Attached to Defendants' Request for Judicial Notice as Exhibit B is a true and  
3 correct copy of the online Annual Report 2021-2022, filed with the water board associated with  
4 the general permit and the 2022 SWPPP.

5 5. Attached to Defendants' Request for Judicial Notice as Exhibit C is a true and  
6 correct copy of the online Annual Report 2022-2023, filed with the water board associated with  
7 the general permit and the 2022 SWPPP.

8 6. Attached to Defendants' Request for Judicial Notice as Exhibit D is a true and  
9 correct copy of the online Annual Report 2023-2024, filed with the water board associated with  
10 the general permit and the 2022 SWPPP.

11 7. I am informed and believe that since October 2022 to present, Plaintiff and/or its  
12 agents have made a litany of complaints against Defendants to multiple state and local agencies:  
13 State Water Resources Control Board; Department of Fish and Wildlife; OSHA; State Board of  
14 Industrial Relations; Air Quality Control Board; Humboldt County Planning and Building  
15 Department; Glendale Municipal Services District. With the exception of the Water Board, all of  
16 the complaints have been addressed and/or found to be wrong or unfounded.

17 8. In May of 2024, the Water Board sent a notice to Defendants with specific points  
18 to be addressed regarding potential violations of the State Water Code as it relates to "Waters of  
19 the State" (WOTS) as defined under the Porter-Cologne Water Act and the stormwater held  
20 onsite at the facility.

21 9. In 2018, the State of California adopted language defining what are "Waters of the  
22 State." It did so anticipating that "Waters of the United States" ("WOTUS" Navigable Waters)  
23 under the Clean Water Act was being narrowed by court decisions. The definition of "Waters of  
24 the State", under the Porter-Cologne Water Act and State Water Code, expands state protection  
25 into areas not covered by the CWA.

26 10. It is my understanding from multiple discussions with the consultants hired by  
27 Defendants to address each specific issue in the notice, is that there is one remaining issue to be  
28 addressed which is whether or not a culvert in the North Yard (RJN Exb. A, Appendix A) is a

1 “Water of the State” or whether it is a man-made culvert (not a Water of the State.) This issue  
2 will be resolved by recently acquired aerial photographs from the 1950s showing the area before  
3 the culvert was dug, and then after the culvert was dug. This culvert was initially installed by the  
4 lumber mill which once occupied the site. Defendants had used the culvert for non-industrial  
5 storm water run off from an access road in the north yard. This culvert was plugged as part of the  
6 design reduction BMPs installed to prevent all discharge from the facility (whether industrial or  
7 non-industrial) and is described in the 2022 SWPPP as holding the stormwater from the road and  
8 then pumping it into the holding/retention pond (“culvert plugged, water retained in pond”).

9 I declare under penalty of perjury pursuant to the laws of the State of California and the  
10 United States that the foregoing is true and correct to the best of my knowledge, information, and  
11 belief, and that this declaration was executed on October 2, 2024, at Eureka, California.

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13 /s/ Allison G. Jackson  
14 Allison G. Jackson  
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